REMARKS

Claims 1, 3-22, and 25-34 are pending in the application. Claims 1, 3-22, and 25-34 currently stand rejected. Claim 1 is amended herein. The Applicant respectfully requests consideration of the following remarks and allowance of the claims.

35 U.S.C. § 101 Rejection

Claims 1 and 3-20 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. The body of claim 1 has been amended herein to overcome the rejection. The remaining claims depend from claim 1. Therefore, in light of the above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 101 rejection of claims 1 and 3-20.

35 U.S.C. § 103 Rejection

Claims 1, 3-14, 16, 19-22, 26-31, and 33-34 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,111,391 (Fields) in view of U.S. Patent Application Publication No. 2002/0143597 A1 (Andre) further in view of a public use of Click2Staff software, as evidenced by *Employee Scheduling Becomes More Complex*, Credit Union Times, March 13, 2002, p. 1-4 (hereinafter Employee Scheduling); Berkofsky, *Banks to Start Embracing Workforce Technology*, Bank Systems & Technology, 2002, p. 1-3 (hereinafter Berkofsky); Norton-Miller, *GECU Saves Money With ASP Staffing Model*, microbanker.com, Feb 2003, p.1-4 (hereinafter Norton-Miller); *Wells Using Traffic Prediction Software*, American Banker, Sept. 13, 2002, p. 1 (hereinafter Wells); and *Exametric's Click2Staff to Optimize Workforce at First Hawaiian Back*, exametic.com, Nov. 11, 2002, p. 1-2 (hereinafter Hawaiian Bank). The Applicant respectfully traverses the rejection for at least the following reasons.

In the final Office action (dated 04/07/2009, hereinafter final OA), the Examiner admits that Fields in view of Andre does not explicitly teach processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules, wherein the historical shift patterns comprise a resource dependent shift pattern, a time dependent shift pattern, and a ratio dependent shift pattern (final OA, p. 6). Instead, the Examiner asserts that the Click2Staff software teaches these limitations. However, the Applicant asserts that, even if the Click2Staff software contained the attributes as discussed

7

in the Examiner's cited articles, Fields in view of Andre and Click2Staff software fails to teach or suggest every limitation of claim 1.

In particular, the Examiner asserts that Wells, Berkofsky, and Norton-Miller provide evidence that Click2Staff software possessed the feature of processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules, as recited in claim 1.

Regarding the Wells reference, the Examiner asserts that this limitation is taught by the software using algorithms based on historical data to determine what days and times a branch is busy so that it can be staffed appropriately (Final OA, p. 6-7). However, merely determining the busiest times of a branch based on historical data does not teach or suggest processing past schedules using a *pattern recognition procedure* to recognize historical *shift* patterns for a *particular position* indicated in the past schedules. Wells does not teach using the historical data for recognizing any historical patterns related to a **shift**, let alone for a ***particular position*** indicated in the past schedules, and such indication by the Examiner is respectfully requested.

Regarding the Berkofsky reference, the Examiner asserts that processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules is taught wherein "[t]he electronic files get regenerated each month using accumulated historical staffing and customer data, enabling the system to produce even more accurate results...the Exametric product had detected a shift in customer traffic from afternoon to morning hours before she did, enabling her to shift resources accordingly" (Final OA, p. 7). However, the "electronic files" referred to in Berkofsky are "electronic journal files, which, when combined with customer statistics files, perform the desired scheduling" (Berkofsky, p. 1, para. 5, lines 1-2). Thus, merely regenerating these journal files monthly, even using historical staffing and customer data, does not specifically teach or suggest recognizing historical ***shift patterns*** for a ***particular position*** indicated in the past schedules. Moreover, detecting a shift in ***customer*** traffic from morning to afternoon hours is unrelated to processing ***past schedules*** using a pattern recognition procedure to ***recognize historical shift patterns*** for a ***particular position*** indicated in the past schedules, as recited in claim 1.

Regarding the Norton-Miller reference, the Examiner also asserts that the statement "[w]ith a full year's transaction data now in the Click2Staff database, we have found the

forecasting tool to be very accurate" teaches processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules (Final OA, p. 7). However, *transaction* data is unrelated to processing *past schedules*, and clearly does not teach using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules.

Therefore, the Wells, Berkofsky, and Norton-Miller references – separately or in combination – all fail to disclose or suggest that the Click2Staff software possessed the features of processing past schedules using a pattern recognition procedure to recognize historical shift patterns for a particular position indicated in the past schedules, as recited in claim 1.

In addition, the art of record fails to attribute a ratio dependent shift pattern to Click2Staff software. The Examiner asserts that a ratio dependent shift pattern is taught in Berkofsky, pg. 1, where the Exametric product detected a shift in customer traffic from afternoon to morning hours before the manager did, enabling *her* to shift resources accordingly. The Examiner then asserts that the Berkofsky reference demonstrates that "Click2Staff software detected that morning hour positions required more resources than afternoon hour positions; thus demonstrating a ratio of greater than 1 between morning and afternoon staffing" (final OA, p. 8). However, contrary to the Examiner's assertion, Berkofsky does not suggest that Click2Staff "detected that morning hour positions required more resources than afternoon hour positions"; if it had, it would have scheduled the appropriate resources to handle the detected customer traffic and the *manager* would not have needed to "shift resources accordingly." Further, the Examiner assumes that a ratio of greater than 1 between morning and afternoon staffing would be required to handle the shift in customer traffic from afternoon to morning hours detected by Click2Staff, but the increased customer traffic could be handled by scheduling more efficient workers who are able to handle more customer transactions at the time of higher customer traffic, and thus the ratio between morning and afternoon hours could remain the same as prior to any rescheduling. Regardless, Berkofsky fails to demonstrate that Click2Staff software was able to *recognize a ratio dependent shift pattern*, as recited in claim 1.

Based on the above comments, neither Fields nor Andre nor Click2Staff software – separately or in combination – teach or suggest all of the limitations of independent claim 1. Claim 1 is therefore allowable over the art of record and such indication by the Examiner is respectfully requested.

Independent claim 21 contains limitations similar to those of claim 1 and is therefore allowable over Fields in view of Andre and Click2Staff software for at least the same reasons as discussed above for claim 1. Dependent claims 3-14, 16, 19, 20, 22, 26-31, and 33-34, while separately allowable over the art of record, depend from otherwise allowable independent claims. The Applicant therefore refrains from further discussion of the dependent claims for the sake of brevity.

Claims 15, 17, and 32 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Fields in view of Andre and further in view of a public use of Click2Staff software, further in view of a public use of GMT Planet software, as evidenced by gmtcorp.com, GMTPlanet, 2001, retrieved from web.archive.org, http://web.archive.org/web/20010415113036/www.gmtcorp.com (GMTcorp.com). Claims 15 and 17 depend from independent claim 1 and claim 32 depends from independent claim 21, thus incorporating the provisions of their associated independent claims. Thus, the Applicant respectfully contends that claims 15, 17, and 32 are allowable for at least the reasons presented above in support of claims 1 and 21, and such indication by the Examiner is respectfully requested.

Claim 18 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fields in view of Andre and further in view of a public use of Click2Staff software, further in view of U.S. Patent No. 6,823,315 B1 (Bucci). Claim 18 depends from independent claim 1, thus incorporating the provisions of independent claim 1. Thus, the Applicant respectfully contends that claim 18 is allowable for at least the reasons presented above in support of claim 1, and such indication by the Examiner is respectfully requested.

Claim 25 stands rejected under 35 U.S.C. § 103(a) as unpatentable over Fields in view of Andre and further in view of a public use of Click2Staff software, further in view of U.S. Patent No. 7,222,082 B1 (Adhikari). Claim 25 depends from independent claim 21, thus incorporating the provisions of independent claim 21. Thus, the Applicant respectfully contends that claim 25 is allowable for at least the reasons presented above in support of claim 21, and such indication by the Examiner is respectfully requested.

Therefore, in light of the above, the Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejections of claims 1, 3-22, and 25-34.

CONCLUSION

Based on the above remarks, the Applicant submits that the claims in their present form are allowable over the art of record. Additional reasons in support of patentability exist, but such reasons are omitted in the interests of clarity and brevity. The Applicant respectfully requests allowance of the claims at the Examiner's earliest convenience.

The Applicant believes no fees are due with respect to this filing. However, should the Office determine that fees are necessary, the Office is hereby requested to contact the undersigned to arrange for payment of the applicable fees.

Respectfully submitted,

/Eric M. Collins/

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